

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2008-0447-MSW-E TCEQ ID: RN102935491 CASE NO.: 35572
RESPONDENT NAME: DONALD CASTRO DBA VILLARREAL'S ICE HOUSE

Page 1 of 2

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: 18508 Bandera Road, Helotes, Bexar County

TYPE OF OPERATION: Property

SMALL BUSINESS: ☒ Yes ☐ No

OTHER SIGNIFICANT MATTERS: There has been one complaint. The complainant alleged that the respondent was bringing in brush and leaving it on the property. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: One complaint has been received but the complainant has not indicated a desire to protest this action or speak at Agenda. No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on May 18, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Anna M. Treadwell, Litigation Division, MC 175, (512) 239-0974
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

TCEQ Enforcement Coordinator: Mr. John Shelton, Waste Enforcement Section, MC 128, (512) 239-2563

TCEQ Regional Contact: Mr. Joel Anderson, San Antonio Regional Office, MC R-13, (210) 4034010

Respondent: Mr. Donald Castro, Owner, Villarreal's Ice House, 18508 Bandera Road, Helotes, Texas 78023

Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: December 12, 2007</p> <p>Dates of Investigation Relating to this Case: December 13, 2007 – March 3, 2008</p> <p>Date of NOE Relating to this Case: March 17, 2008</p> <p>Background Facts: The EDPRP was filed on April 9, 2008. Settlement was achieved when an Agreed Order was signed on February 15, 2009.</p> <p>Current Compliance Status: The Respondent has grounded up the brush on site and is using it for compost material.</p> <p>MSW: Failed to dispose of municipal solid waste at an authorized facility [30 TEX. ADMIN. CODE § 330.15(c)].</p>	<p>Total Assessed: \$1,050</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Paid/Due to General Revenue: \$525/\$525</p> <p>The Respondent paid \$525 of the administrative penalty. The remaining amount of \$525 of the administrative penalty shall be payable in one monthly payment of \$525.</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Immediately, cease accepting any municipal solid waste at this facility. 2. Within 30 days, remove brush being used as a buffer for runoff and dispose of it in an authorized manner. 3. Within 45 days, submit written certification demonstrating compliance.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision February 29, 2008

TCEQ

DATES	Assigned	17-Mar-2008	Screening	18-Mar-2008	EPA Due	
	PCW	2-Dec-2008				

RESPONDENT/FACILITY INFORMATION

Respondent	Donald Castro dba Villarreal's Ice House		
Reg. Ent. Ref. No.	RN102935491		
Facility/Site Region	13-San Antonio	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	35572	No. of Violations	1
Docket No.	2008-0447-MSW-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Enf. Coordinator	John Shelton
Multi-Media		EC's Team	Enforcement Team 7
Admin. Penalty \$	Limit Minimum	\$0	Maximum
			\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** \$1,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 5% Enhancement **Subtotals 2, 3, & 7** \$50

Notes There was one NOV for same or similar violations at the site.

Culpability No 0% Enhancement **Subtotal 4** \$0

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply 0% Reduction **Subtotal 5** \$0

Before NOV NOV to EDRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes The Respondent does not meet the good faith criteria.

Total EB Amounts \$286 **0% Enhancement*** **Subtotal 6** \$0
Approx. Cost of Compliance \$3,909 ***Capped at the Total EB \$ Amount**

SUM OF SUBTOTALS 1-7 **Final Subtotal** \$1,050

OTHER FACTORS AS JUSTICE MAY REQUIRE 0% **Adjustment** \$0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount \$1,050

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** \$1,050

DEFERRAL Reduction **Adjustment** \$0

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral not offered for non-expedited settlement.

PAYABLE PENALTY \$1,050

Screening Date 18-Mar-2008

Docket No. 2008-0447-MSW-E

PCW

Respondent Donald Castro dba Villarreal's Ice House

Policy Revision 2 (September 2002)

Case ID No. 35572

PCW Revision February 29, 2008

Reg. Ent. Reference No. RN102935491

Media [Statute] Municipal Solid Waste

Enf. Coordinator John Shelton

Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action <i>(number of NOVs meeting criteria)</i>	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government <i>(number of judgements or consent decrees meeting criteria)</i>	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government <i>(number of counts)</i>	0	0%
Emissions	Chronic excessive emissions events <i>(number of events)</i>	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which notices were submitted)</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which violations were disclosed)</i>	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

>> **Repeat Violator (Subtotal 3)**

No

Adjustment Percentage (Subtotal 3) 0%

>> **Compliance History Person Classification (Subtotal 7)**

N/A

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

There was one NOV for same or similar violations at the site.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 18-Mar-2008		Docket No. 2008-0447-MSW-E		PCW
Respondent Donald Castro dba Villarreal's Ice House		<small>Policy Revision 2 (September 2002)</small>		
Case ID No. 35572		<small>PCW Revision February 29, 2008</small>		
Reg. Ent. Reference No. RN102935491				
Media [Statute] Municipal Solid Waste				
Enf. Coordinator John Shelton				
Violation Number		<div style="border: 1px solid black; width: 50px; text-align: center;">1</div>		
Rule Cite(s)		<div style="border: 1px solid black; padding: 5px;">30 Tex. Admin. Code § 330.15(c)</div>		
Violation Description		<div style="border: 1px solid black; padding: 5px;">Failed to dispose of municipal solid waste at an authorized facility, as documented during an investigation conducted from December 13, 2007 to March 3, 2008. Specifically, the Respondent is using approximately 500 cubic yards of brush, received from off site, as a buffer for water runoff. The brush is not being used as recyclable material at the facility and has been disposed of in an unauthorized manner.</div>		
Base Penalty				<div style="border: 1px solid black; width: 100px; text-align: right;">\$10,000</div>
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	x
	Potential	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>
Percent				<div style="border: 1px solid black; width: 50px; text-align: right;">10%</div>
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>
Percent				<div style="border: 1px solid black; width: 50px; text-align: right;">0%</div>
Matrix Notes		Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of this violation.		
Adjustment				<div style="border: 1px solid black; width: 100px; text-align: right;">\$9,000</div>
				<div style="border: 1px solid black; width: 100px; text-align: right;">\$1,000</div>
Violation Events				
Number of Violation Events		<div style="border: 1px solid black; width: 50px; text-align: center;">1</div>	<div style="border: 1px solid black; width: 50px; text-align: center;">96</div>	Number of violation days
<small>mark only one with an x</small>	daily	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>		
	monthly	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>		
	quarterly	x		
	semiannual	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>		
	annual	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>		
	single event	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>		
One quarterly event is recommended.				
Economic Benefit (EB) for this violation				
Estimated EB Amount		<div style="border: 1px solid black; width: 100px; text-align: right;">\$286</div>	Statutory Limit Test	
			Violation Final Penalty Total <div style="border: 1px solid black; width: 100px; text-align: right;">\$1,050</div>	
		This violation Final Assessed Penalty (adjusted for limits)		<div style="border: 1px solid black; width: 100px; text-align: right;">\$1,050</div>

Economic Benefit Worksheet

Respondent Donald Castro dba Villarreal's Ice House

Case ID No. 35572

Reg. Ent. Reference No. RN102935491

Media Municipal Solid Waste

Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs	\$3,909	13-Dec-2007	31-May-2009	1.5	\$286	n/a	\$286
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to dispose of approximately 500 cubic yards of brush at an authorized facility. Date Required is the investigation date and the Final Date is the expected date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$3,909

TOTAL

\$286

Compliance History

Customer/Respondent/Owner-Operator:	CN603331893	CASTRO, DONALD	Classification:	Rating:
Regulated Entity:	RN102935491	VILLARREALS ICE HOUSE	Classification: AVERAGE	Site Rating: 2.50
ID Number(s):				
Location:	18508 BANDERA RD, HELOTES, TX, 78023		Rating Date: September 01 07 Repeat Violator: NO	
TCEQ Region:	REGION 13 - SAN ANTONIO			
Date Compliance History Prepared:	March 20, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	March 18, 2003 to March 18, 2008			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Dana Shuler		Phone:	(512) 239-2505

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? Yes
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
 - B. Any criminal convictions of the state of Texas and the federal government.
N/A
 - C. Chronic excessive emissions events.
N/A
 - D. The approval dates of investigations. (CCEDS Inv. Track. No.)
1 12/17/2003 (257013)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
Date: 06/13/2003 (16388)
Self Report? NO Classification: Major
Citation: 30 TAC Chapter 330, SubChapter A 330.4(a)
30 TAC Chapter 330, SubChapter A 330.5(a)(1)
Description: Unauthorized disposal of solid waste.
 - F. Environmental audits.
N/A
 - G. Type of environmental management systems (EMSs).
N/A
 - H. Voluntary on-site compliance assessment dates.
N/A
 - I. Participation in a voluntary pollution reduction program.
N/A
 - J. Early compliance.
N/A
- Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
DONALD CASTRO DBA
VILLARREAL'S ICE HOUSE
RN102935491**

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§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2008-0447-MSW-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Donald Castro dba Villarreal's Ice House ("Mr. Castro") under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 361. The Executive Director of the TCEQ, represented by the Litigation Division, and Mr. Castro appear before the Commission and together stipulate that:

1. Mr. Castro owns property located at 18508 Bandera Road, Helotes, Bexar County, Texas (the "Facility").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. HEALTH & SAFETY CODE ch. 361 and TCEQ rules.
3. The Commission and Mr. Castro agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Castro is subject to the Commission's jurisdiction.
4. Mr. Castro received notice of the violations alleged in Section II ("Allegations") on or about March 22, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Castro of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of one thousand fifty dollars (\$1,050.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. Castro paid five hundred twenty-five dollars (\$525.00) of the administrative penalty. The

remaining amount of five hundred twenty-five dollars (\$525.00) of the administrative penalty shall be payable in one payment of five hundred twenty-five dollars (\$525.00), pursuant to 30 TEX. ADMIN. CODE § 70.9(a). This payment shall be paid within 30 days after the effective date of this Agreed Order. If Mr. Castro fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, Mr. Castro's failure to meet the payment schedule of this Agreed Order constitutes the failure by Mr. Castro to timely and satisfactorily comply with all of the terms of this Agreed Order.

7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Mr. Castro agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Mr. Castro has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

During an investigation from December 13, 2007 to March 3, 2008, a TCEQ San Antonio Regional Office investigator documented that Mr. Castro violated 30 TEX. ADMIN. CODE § 330.15(c) by failing to dispose of municipal solid waste at an authorized facility. Specifically, Mr. Castro used approximately 500 cubic yards of brush, received from off site, as a buffer for water runoff. The brush was not being used as recyclable material at the facility and had been disposed of in an unauthorized manner.

III. DENIALS

Mr. Castro generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. Castro pay an administrative penalty as set forth in Section I, Paragraph 6, above. The payment of this administrative penalty and Mr. Castro's compliance with all the terms and conditions set forth in this Agreed Order resolve only the Allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Donald Castro dba Villarreal's Ice House, Docket No. 2008-0447-MSW-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. Mr. Castro shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, Mr. Castro shall cease accepting municipal solid waste at this Facility.
 - b. Within 30 days after the effective date of this Agreed Order, Mr. Castro shall remove brush being used as a buffer for runoff and dispose of it in an authorized manner, in accordance with 30 TEX. ADMIN. CODE § 330.15(c).
 - c. Within 45 days after the effective date of this Order, Mr. Castro shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Mr. Castro shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.b. to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

and

Joel Anderson, Waste Section Manager
Texas Commission on Environmental Quality
San Antonio Regional Office
14250 Judson Road
San Antonio, Texas 78233-4480

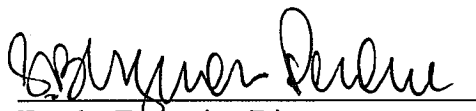
3. The provisions of this Agreed Order shall apply to and be binding upon Mr. Castro. Mr. Castro is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If Mr. Castro fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Castro's failure to comply is not a violation of this Agreed Order. Mr. Castro shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Castro shall notify the Executive Director within seven days after Mr. Castro becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Castro shall be made in writing to the Executive Director. Extensions are not effective until Mr. Castro receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against Mr. Castro in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

7. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T. CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Mr. Castro, or three days after the date on which the Commission mails notice of the Order to Mr. Castro, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

5/27/2009

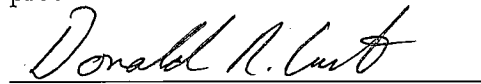
Date

I, the undersigned, read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

In addition, I understand that any falsification of any compliance documents may result in criminal prosecution.



Signature

2-19-09

Date

Donald Castro

Name (Printed or typed)
Donald Castro

Owner

Title